

FILED

2011 MAY 27 AM 10:25

ML. HATCHER, CLK.  
U.S. BANKRUPTCY COURT  
W.D. OF WA AT TACOMA  
BY \_\_\_\_\_ DEP. CLK.

THE HONORABLE BRIAN D. LYNCH  
Chapter 7  
Hearing Date: June 1, 2011  
Response Date: May 31, 2011  
Location: Tacoma, Washington

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:	)	Bankruptcy No. 10-45608-BDL
	)	
SUSAN FAYES DONES	)	Adversary No. 10-04338- BDL
Debtor	)	
	)	
KIM MARIE WOOLHOUSE	)	Bankruptcy No. 10-45609
Debtor	)	
	)	Adversary No. 10-04339- BDL
	)	
NXIVM CORPORATION, a Delaware	)	
Corporation	)	
Plaintiff,	)	<b>DEFENDANTS' MOTION TO</b>
v.	)	<b>QUASH OR LIMIT NIXVM'S</b>
	)	<b>SUBPOENAS REGARDING</b>
SUSAN FAYE DONES and	)	<b>PETER SKOLNICK, JOSEPH</b>
KIM MARIE WOOLHOUSE	)	<b>O'HARA AND TONI NATALIE</b>
Defendants	)	
	)	

In response to Plaintiff NXIVM's proposed subpoenas regarding Peter Skolnick, Joseph O'Hara and Toni Natalie, Defendants Dones and Woolhouse hereby request this Court either quash these subpoenas entirely or strictly limit them to matters that concern our respective cases. In this regard, we ask the Court to take judicial notice of the fact that NXIVM, its leaders and the same legal team of lawyers are currently involved in multiple lawsuits involving multiple jurisdictions. Upon information and belief, they often attempt to use discovery in one case in order to obtain information for use in other cases. In addition, we also ask that the Court limit any depositions that NXIVM conducts with respect to this case to questions that only pertain to

this case and that it not allow NXIVM to use depositions in this case as a “fishing expedition” with respect to other legal matters.

We request the court to take judicial notice that the reason NXIVM first came into the defendant’s bankruptcy had nothing to do with any grand conspiracy claims and are attempting to get this court to “buy” that the Defendants have been involved in. The Defendants filed 15 months after leaving NXIVM and NXIVM waited an additional 90 days. If there was a grand conspiracy would NXIVM not have known this before entering into the Defendants bankruptcies? NXIVM waited until the Defendants bankruptcy to deal with any of their issues with the Defendants. NXIVM has “cooked up” this idea in order to make a full sweep of their ex-members they have labeled as the Anti-NXIVM group who, they allege in what we believe is their paranoia, are out to spread their Anti-NXIVM sentiments in order to destroy NXIVM.

We ask the court to take judicial notice that NXIVM is a litigation machine that is quick to file legal action against anyone who expresses an opinion about their “leader” Keith Raniere’s behaviors. The less financial resources the person has the better for NXIVM as they never filed suit against Edgar Bronfman Sr. who called NXIVM a cult in the September 25, 2003 Forbes Magazine article entitled “NXIVM Cult of Personality”. NXIVM has never filed suit against any large News Paper or Magazine that have been writing negative articles about Raniere since his illegal chain distribution company, Buyline Inc was shut down by the New York Attorney’s office. NXIVM will spend millions to silence ex-members who voice an opinion about Raniere that is negative. Raniere testified in the NXIVM vs. Ross case that he is not an officer of NXIVM but an unpaid volunteer for NXIVM but NXIVM spends millions defending this volunteer.

NXIVM labels those who speak out publicly as Suppressive who are out to destroy the NXIVM movement. NXIVM’s favorite venue to enter into has been bankruptcy court. NXIVM models their litigation after the Church of Scientology who was found to misuse the court system in the following way;

In *RTC v. Robin Scott*, a U.S District Court Memorandum of Decision in 1993,

[Scientologist] “have abused the federal court system by using it, inter alia, to destroy their opponents, rather than to resolve an actual dispute over trademark law or any other legal matter. This constitutes “extraordinary, malicious, wanton, and oppressive conduct”... It is abundantly clear that plaintiffs sought to harass the individual defendants and destroy the church defendants through massive

over-litigation and other highly questionable litigation tactics. The Special Master has never seen a more glaring example of bad faith litigation than this”

NXIVM has five (5) attorney’s on this case plus the “Master Mind” of Keith Raniere who is directly involved with all their legal cases, Kristin Keeffe who has been NXIVM’s legal liaison for years and upon information and belief knew bankruptcy law inside and out, and NXIVM hires many of their members to research documents for their case.

Five attorneys’ are now in this case against two pro se defendants who cannot afford a retainer for an attorney nor can they find pro bono help. Once an attorney Google’s NXIVM, any attorney knows this case could cost hundreds of thousands of dollars to defend.

Now NXIVM has a new tactic is; bring all their identified “Suppressive” into the Defendant’s bankruptcy in order to do a Grand Conspiracy Sweep of anyone they believe who have thwarted their movement, turned over evidence of NXIVM or their leadership’s illegal action, or spoken to anyone in the press about their personal experience. This is a prime example of an unconscionable fishing expedition.

*In Merck & Co., Inc., 2006* If derivative plaintiffs are allowed to obtain discovery after making conclusory allegations in their complaints to strengthen those very complaints, then shareholder plaintiffs will have incentive to make baseless allegations and then engage in **discovery fishing expeditions**.

*In Bell Atl. Corp v. Twombly, 2007* (to state a claim, a complaint must contain “enough factual matter (taken as true) to suggest” the required element). Any argument by Plaintiffs that they have produced no evidence in support of their claims because they have been denied discovery is also rejected. Plaintiffs have pointed to no evidence that they even subjectively believe may exist in support of their claims, and they are not entitled to conduct a **discovery fishing expedition** based on speculation that they may catch something.

These subpoenas are “Fishing Expeditions” and should not be allowed by this court.

Exhibit 1 is an example of how NXIVM abuses depositions. NXIVM Counsel Robert Crockett in the this case has used the Deposition of Barbara Bouchey in NXIVM vs. Ross to ask questions that were not limited to his client Kristin Keeffe to ask question in great detail about NXIVM and Raniere and asked few questions that were about issues that involved his client Ms. Keeffe.

In the last page of Exhibit 1 Crockett send an email to Bouchey counsel gloating about a win in a different case that Bouchey was a witness.

1. NXIVM is using the fact that the Defendants have communicated with Skolnick, O'Hara and Natalie as the defendants "*might have given*" documents and information about NXIVM's dispute with the Defendants to Skolnick, O'Hara and Natalie. The documents sought are
  - a. Communications to / from Dones / Woolhouse relating to NXIVM or its agents or this litigation dated after June 2008, including phone and text message records;
  - b. Documents to/from Dones / Woolhouse relating to or leading up to the April 2009 meetings with Keith Raniere and/or the videotapes of those meetings; an
  - c. Documents to/from Dones and Woolhouse relating to or leading up to the April 24, 2009 email sent to Keith Raniere and Nancy Salzman

The Defendants did not know or communicate with Skolnick, O'Hara or Natalie until after their resignation from NXIVM. The April 24, 2009 resignation email is a matter of public document via NXIVM filing in Bouchey, Woolhouse and Dones cases.

2. Peter Skolnick

Skolnick is Rick Ross' attorney in NXIVM vs. Ross – NXIVM is requesting documents from Skolnick that Skolnick does not have from Dones / Woolhouse regarding NXIVM.

- a. Barbara Bouchey has been deposed in NXIVM vs. Ross. Upon information and belief, Bouchey has turned over NXIVM related documents including a copy of the April 2009 videos to Skolnick.
- b. The Defendants have not given any documents relating to or leading up to the April 2009 meeting with Raniere or the April 24, 2009 resignation letter. Upon information and belief the only document that exists is an email that Bouchey sent to Raniere to request the meeting.
- c. The last part of the Ross case is wrapping up after eight (8) years of litigation. Upon information and belief the Summary Judgments will not be in NXIVM's favor and this is a "Hail Mary Pass" to get Skolnick and the law firm he works for thrown off the case in order to prolong this case, to harass Skolnik and affect the outcome of NXIVM vs. Ross case.

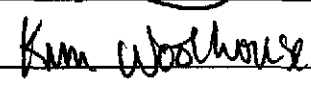
3. Joseph O'Hara is a whistle blower who resigned from NXIVM and turned over evidence in the Ross case that exposed NXIVM's conspiracy plot that Raniere, Salzman, Kieffe and other NXIVM insiders were involved in that is explained in more detail in the Defendants response to NXIVM Motion to Compel Compliance.
4. Toni Natalie, who after breaking off her relationship with Raniere was another victim of NXIVM legal annihilation, she spent 8.4 years in bankruptcy hell while Raniere, Salzman and Kieffe each took their turns to get her bankruptcy thrown out via their adversary complaints. It was Judge Littlefield of the Northern District of New York Bankruptcy Court who finally said enough ending the adversary complaints and allowing Natalie discharge. Upon information and belief NXIVM has been looking for reasons to continue their legal torture of Natalie and their claims of conspiracy is the perfect venue to drag her back into litigation.

The Defendants ask that the Court take into consideration the following points in deciding whether to approve any of NXIVM's requested subpoenas:

- a. NXIVM has separate legal teams in at least four States: i.e., California, New Jersey, New York, and Washington. NXIVM should be required to schedule depositions so that if either Defendant wants to attend, that they can do so logistically.
- b. Defendants request that the date and location of any deposition be set so that they can attend.
- c. Copies of all documents produced in the any subsequent deposition should be provided at no cost to the Defendants as part of discovery
- d. Defendants should be provided with a copy of any video, oral tapes and or written copies of any deposition as a part of discovery.
- e. Defendants request that possible depositions in New York for Mr. O'Hara, Ms. Bouchey, Ms. Cote and Ms. Natalie be planned and scheduled with Dones's possible depositions of Salzman and Raniere in order to reduce her travel costs.

Date: May 26, 2011

Susan Faye Dones: 

Kim Marie Woolhouse: 

## CERTIFICATE OF SERVICE

Paul D Swanson **Email and regular mail**  
Lane Powell PC  
1420 5th Ave Ste 4100  
Seattle, WA 98101  
206-223-7000  
[swansonp@lanepowell.com](mailto:swansonp@lanepowell.com)

Tiffany H Scott **Email**  
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206-223-7000  
[scottt@lanepowell.com](mailto:scottt@lanepowell.com)

Robert D Crockett **Email**  
Latham & Watkins LLP  
355 S Grand Ave  
Los Angeles, CA 90071  
213-891-8254  
[bob.crockett@lw.com](mailto:bob.crockett@lw.com)

Trustee: Waldron, Mark **CM/ECF**

Date May 26, 2011

Susan Dones  \_\_\_\_\_

Kim Woolhouse  \_\_\_\_\_

# Exhibit 1

**Medvin & Elberg**  
ATTORNEYS AT LAW

PHILIP ELBERG\*  
ALAN Y. MEDVIN\* \*

—  
\*Member N.Y., N.J. Bar  
\*\*Certified by the Supreme Court of  
New Jersey as a Civil Trial Attorney

ONE GATEWAY CENTER  
NEWARK, NJ 07102  
(973) 642-1300

FAX NO. (973) 642-8613

April 28, 2011

Honorable Mark Falk, U.S.M.J.  
United States District Court  
U.S. Post Office and Courthouse, Room 457  
One Federal Square  
Newark, New Jersey 07102

RE: NXIVM v. The Ross Institute, et al.  
Docket No. 06-cv-01051 (DMC) (MF)

Dear Judge Falk:

Please accept this letter in lieu of a more formal submission in response to Your Honor's order of April 19, 2011 with respect to Ms. Bouchey's telephone records. I have reviewed the transcript of the colloquy with the court at the conclusion of Ms. Bouchey's deposition on April 18, 2011 as well as the transcript of the case management conference you conducted on March 8, 2011 and my notes of the telephone conference during the prior week.

On the basis of my review of those documents, it is clear to me that Your Honor views as potentially relevant within the meaning of Fed. R. Civ. P. 26 calls to or from parties in this case and their lawyers in that they at least have the potential to lead to the discovery of admissible evidence but that contacts with others, particularly former NXIVM members and critics is not relevant and would not be consistent with Fed R. Civ. P 26C (iii) because the burden or expense of the proposed discovery outweighs its likely benefit,



considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues.

The Rule 26 considerations are particularly significant here where my review indicates that there are more than 27,000 separate entries in Ms. Bouchey's phone records and the only issues before the court involve whether trade secrets were improperly taken, whether copyrights have been infringed and whether there was interference with a contract in 2002 or 2003 when all of the complaint related events occurred.

Against that background I am satisfied that Your Honor's order that permitted me to "redact the phone records to reflect communications with a limited number of individuals" is intended to be limited to relevant communications and individuals, which in practice means only parties and their lawyers. I am referencing now all such contacts without regard to whether they are in fact related to issues in this case because I do not know how to make that distinction. In order to move this along I have instructed Ms. Bouchey to make those redactions and we will be prepared to produce those redacted records promptly.

Ms. Bouchey has also asked me to request that Your Honor reconsider your directive that her deposition can be continued for an additional four hours. We ask that you reconsider for the following reasons.

(a) We now have a transcript of her latest deposition taken on April 18. I respectfully request that Your Honor review it since when

agreeing to supervise the continuation of this deposition, you indicated that you reviewed the transcript of the first day of her deposition. The transcript demonstrates that plaintiffs' did far more than just "cover the waterfront" as Mr. Crockett sarcastically indicated. What it will show is that during an all day deposition my client was asked few questions that have anything to do with the issues being litigated or that relate in any way to the questions asked on the first day of her deposition with respect to NXIVM's practices and record keeping. Rather, counsel spent the day asking Ms. Bouchey about her tax filings which they have somehow obtained and made conspicuous at her deposition, telephone conferences she had with others who were formerly associated with NXIVM -- pointedly letting her know through their questions that they had somehow learned of conversations that occurred on specific days and times in the last year -- and questions about Ms. Bouchey's personal life. The intended message to her was clear. Even when Mr. Crockett did ask about NXIVM's practices with respect to what they claim is confidential, he asked the questions and used a tone of voice that was clearly intended to try to trick the witness, and I use the word "trick" in its most pejorative sense. If there is any question about this, I am certain Your Honor can obtain access to the videotape of the deposition.

(b) A comparison of the deposition of the two days demonstrates that the plaintiff and defendants spent roughly the same amount of time deposing the witness when breaks and lengthy objections are subtracted out. If your Honor's goal was to level the playing field that has been accomplished and more. I will quickly submit a calculation showing how much time each side spent if the Court wishes to see it.

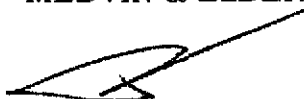
(c) Mr. Crockett, who represents only Ms. Keefe, asked questions in great detail about NXIVM and Mr. Ranieri, and clearly on behalf of those parties. Few of his questions were about issues that involve Ms. Keefe. Subjecting her to renewed questioning on behalf of NXIVM and Ranieri would be both inappropriate, unreasonable and unfair.

(d) The record demonstrates that the deposition tactics used against Ms. Bouchey, including the side trip to Federal Court in Albany, by the NXIVM side of this case has been motivated not by an effort to demonstrate her bias to a jury but rather by an effort to demonstrate to Ms. Bouchey the extent of the litigants bias against her and their goal of using litigation tactics to scare her into silence. The best and most recent proof of that is not just their making sure she saw, while testifying, that the 3 NXIVM "observers" in the courtroom were reviewing her personal tax returns while Mr. Crockett asked questions about them. Even worse from my perspective is a

series of emails that Mr. Crockett somehow felt compelled to send me taunting Ms. Bouchey within minutes after receiving a verdict in his California case. I have never seen anything like it. The exchange is attached as Exhibit A.

Respectfully submitted

MEDVIN & ELBERG

A handwritten signature in black ink, appearing to be 'P. Elberg', written over a horizontal line.

BY: PHILIP ELBERG

PE:pl  
cc: All Counsel

From: Phil Elberg [<mailto:pelberg@medelb.com>]  
Sent: Friday, April 15, 2011 01:49 PM Pacific Standard Time  
To: [McGuire@tompkinsmcguire.com](mailto:McGuire@tompkinsmcguire.com); Crockett, Bob (LA);  
[robert.leonard@dbr.com](mailto:robert.leonard@dbr.com); [HKOFMAN@RIKER.com](mailto:HKOFMAN@RIKER.com); [rlandy@fklaw.com](mailto:rlandy@fklaw.com); [rlandy@fklaw.com](mailto:rlandy@fklaw.com); Skolnik, Peter  
L.  
Subject: Production of Documents

Dear counsel:

I have attached to this email the documents that were forwarded

to Judge Falk for in camera review. The name of each document corresponds to the numbering on the subpoena. If I have missed members of your respective firms that should receive these documents please forward them.

Phil Elberg

Philip Elberg  
[pelberg@medelb.com](mailto:pelberg@medelb.com) <<mailto:pelberg@medelb.com>>  
Medvin & Elberg  
One Gateway Center  
Newark, New Jersey 07102  
973-642-1300

From: [BOB.CROCKETT@lw.com](mailto:BOB.CROCKETT@lw.com) [<mailto:BOB.CROCKETT@lw.com>]  
Sent: Friday, April 15, 2011 6:59 PM  
To: Phil Elberg; [McGuire@tompkinsmcguire.com](mailto:McGuire@tompkinsmcguire.com); [robert.leonard@dbr.com](mailto:robert.leonard@dbr.com); [HKOFMAN@RIKER.com](mailto:HKOFMAN@RIKER.com);  
[rlandy@fklaw.com](mailto:rlandy@fklaw.com); [PSkolnik@lowenstein.com](mailto:PSkolnik@lowenstein.com)  
Subject: RE: Production of Documents

Thank you thank you thank you Barbara Bouchey for her contribution to our Plyam case and the help with malice. May she be as effective in the case against the Suttons and Ross. Yes sir.

Bob Crockett  
Latham & Watkins

From: Phil Elberg [<mailto:pelberg@medelb.com>]  
Sent: Friday, April 15, 2011 4:10 PM  
To: Crockett, Bob (LA)  
Subject: RE: Production of Documents

Maybe I am supposed to know what this means - I don't

Phil Elberg

EXHIBIT A

**From:** BOB.CROCKETT@lw.com  
**Sent:** Friday, April 15, 2011 9:10 PM  
**To:** Phil Elberg  
**Subject:** RE: Production of Documents

You will. Thank her for me.

Robert D. Crockett

LATHAM & WATKINS LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Direct Dial: +1.213.891.8254  
Fax: +1.213.891.8763  
Email: [bob.crockett@lw.com](mailto:bob.crockett@lw.com)  
<http://www.lw.com>

**From:** Phil Elberg [<mailto:peiberg@medelb.com>]  
**Sent:** Friday, April 15, 2011 07:29 PM Pacific Standard Time  
**To:** Crockett, Bob (LA)  
**Subject:** RE: Production of Documents

I assume you must have won your case. Congratulations but don't you have more important things to do then sarcastically asking me to thank Barbara Bouchey? I really don't get it!

**From:** BOB.CROCKETT@lw.com  
**Sent:** Saturday, April 16, 2011 12:01 AM  
**To:** Phil Elberg  
**Subject:** RE: Production of Documents

She was the reason we won. No sarcasm here.

Bob Crockett  
Latham & Watkins